

## FEDERAL MARITIME COMMISSION

MEYAN S.A.

v.

INTERNATIONAL FRONTIER  
FORWARDERS

Informal Docket  
No. 1867(I)

Served: May 3, 2007

---

**BY THE COMMISSION:** A. Paul ANDERSON, Joseph E. BRENNAN, Harold J. CREEL, Jr., and Rebecca F. DYE, *Commissioners*.

---

### **Order Reversing, In Part, Decision of the Settlement Officer and Reducing Award of Reparations to Claimant**

Meyan S.A. ("Meyan" or "Claimant") initiated this proceeding on August 19, 2005, by filing a claim against International Frontier Forwarders ("Frontier" or "Respondent"), requesting resolution under the informal procedure of the Federal Maritime Commission ("FMC" or "Commission"). See Subpart S of the Commission's Rules of Practice and Procedure, 46 C.F.R. §§ 502.301-502.305 (2006). Meyan alleged in its claim that Frontier, a licensed non-vessel-operating common carrier ("NVOCC"), violated section 10(d)(1) of the Shipping Act, 46

U.S.C. § 41102(c) (2006), by delaying shipment and by failing to pay the ocean carrier. Claim Form at 2. On September 25, 2006, the Settlement Officer found in favor of Meyan, awarding reparations in the amount of \$43,161.93, plus interest. Frontier petitioned for reconsideration on November 6, 2006, and the Settlement Officer denied that petition for reconsideration on January 16, 2007. The Commission issued a notice to review this proceeding on February 16, 2007.

For the reasons set forth below, we have determined to reverse, in part, the decision of the Settlement Officer to award reparations to Meyan for storage and rental fees. We reduce the award of storage fees to \$960.00, and we reduce the award of rental fees to \$14,608.47. Including reparations of \$13,326.84 for overpaid freight charges, the total award of reparations to Claimant is now \$28,895.31, plus interest.

### **BACKGROUND**

On August 19, 2005, Meyan filed a claim against Frontier using the Commission's "Small Claim Form for Informal Adjudication," provided in Exhibit 1 to Subpart S of the Commission's Rules of Practice and Procedure, 46 C.F.R. §§ 502.301-502.305. In its claim, Meyan alleged that it hired Frontier to transport two excavators from Houston, TX, to Cartagena, Columbia, for arrival in April 2005. Claim Form at 1. Meyan claims that the excavators did not actually arrive until June 2005. *Id.* According to the claim and supporting evidence, Meyan paid Frontier for the shipment on June 1, 2005. *Id.* at 1, Attachment 2. However, Meyan claimed, and Frontier admitted, that Frontier did not pay the ocean freight charges to the carrier, Caytrans Project Services ("Caytrans"), for the shipment of the excavators. *Id.* at 1, Attachment 3; Reply Letter at 1. Instead, Frontier admitted in an email to Caytrans that it used the payment from Meyan to satisfy other expenses. Claim Form at Attachment 3. As a result, Caytrans held the cargo at the port of Cartagena awaiting payment. *Id.* at 1, Attachment 3. On June 30, 2005,

Meyan paid Caytrans directly for the release of the excavators. Id. at 1, Attachment 5.

Meyan alleged that Frontier violated section 10(d)(1) of the Shipping Act,<sup>1</sup> “because they delayed shipping the cargo and they collected payment from Meyan S.A., but failed to pay the shipping company.” Id. at 2. As a result, Meyan claimed reparations for reimbursement of the \$14,178.33 that it paid to Caytrans for the release of its cargo. Id. In addition, Meyan alleged that it incurred storage fees while its cargo was held at the port, in the amount of \$1,951.40, and that it was forced to rent excavators to replace the cargo that was held at the port, resulting in fees of \$28,251.09. Id. Meyan requested total reparations in the amount of \$44,447.91. Id.

Meyan submitted documentary evidence in attachments to support its claim, including: the invoice from Frontier to Meyan (Attachment 1); evidence of payment from Meyan to Frontier (Attachment 2); copies of emails in which Caytrans demanded payment from Frontier and in which Frontier admitted its failure to pay (Attachment 3); evidence of payment from Meyan to Caytrans (Attachment 4); copies of emails between Caytrans and Meyan demonstrating that Meyan paid for the release of its cargo on June 30, 2005 (Attachment 5); a copy of the invoice that Caytrans sent to Frontier on May 23, 2005 (Attachment 6); invoices for the storage of the two excavators at the port of Cartagena (Attachment 7); invoices for the rental of replacement excavators, dated May 15 and June 15, 2005 (Attachment 8); copies of emails between Meyan and Frontier about the expected date of arrival and about Frontier’s failure to pay the ocean carrier

---

<sup>1</sup> Section 10(d)(1) of the Shipping Act, now codified at 46 U.S.C. § 41102(c), states: “A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.” As an NVOCC, Frontier is both a “common carrier” and an “ocean transportation intermediary.” 46 U.S.C. § 40102(16), (19) (defining “non-vessel-operating common carrier” and “ocean transportation intermediary”).

(Attachment 9); and copies of Caytrans' bills of lading for each of the two excavators (Attachment 10).

On March 15, 2006, Frontier sent a letter of reply to the Settlement Officer, disputing the amount owed to Meyan. Reply Letter at 1. Frontier alleged that it had intended to pay the shipping charges to Caytrans, but that an error in the dimensions of the excavators had caused it to charge Meyan too little to cover the cost of the ocean freight. Id. Therefore, Frontier argued that it would only reimburse Meyan the portion of the charges it had collected for the ocean freight, \$11,295.59. Id. In addition, Frontier refused to pay for any storage or rental fees incurred during this time. Id. Finally, Frontier asserted that the shipment had not been delayed since there was no agreement as to the date of arrival and since Frontier booked the excavators on the first available vessel. Id. at 2.

On June 15, 2006, the Settlement Officer sent emails to Meyan and Frontier requesting additional information. See 46 C.F.R. § 502.304(a), (e). The request to Frontier included "[a]ny additional information that you think is relevant to your defense." There is no indication in the record that Frontier responded to this request. On June 21, 2006, Meyan responded to the Settlement Officer's request, providing answers to specific questions and English translations of certain documents that had been submitted in Spanish. A copy of this response was sent to Frontier's mailing address.

On July 13, 2006, the Settlement Officer sent an email to Meyan, copied to Frontier, that acknowledged receiving Meyan's additional information and requested more information, including an explanation of the storage invoices that had been translated from Spanish. On July 17, 2006, Meyan responded to this request, providing a detailed explanation of the storage charges, with tables of the storage fees for each excavator ("July 17 Response"). In this response, Meyan revised the amount it claimed for storage fees to \$1,584.00. July 17 Response at 2. Again, a copy of Meyan's

response was mailed to Frontier, but there is no evidence that Frontier responded.

On September 25, 2006, the Settlement Officer issued her decision in favor of Meyan, awarding \$43,161.93 in reparations, plus interest. The Settlement Officer found that Frontier had violated section 10(d)(1) of the Shipping Act, 46 U.S.C. § 41102(c), because “it failed to pay Caytrans the freight charges that it had already received from Meyan” and “used the money to satisfy other business expenses unrelated to Meyan’s shipment.” Initial Decision at 3. The Settlement Officer found that, as a result of Frontier’s violation, “Meyan incurred additional charges to which it would not have otherwise been subject,” including \$13,326.84 in overpaid freight charges, \$1,584.00 in storage fees, and \$28,251.09 to rent replacement equipment. *Id.* at 3-4. The decision of the Settlement Officer did not address whether the shipment of the excavators had been unreasonably delayed.<sup>2</sup>

On October 27, 2006, we issued a notice that the Commission would not review the Settlement Officer’s decision. The Commission rescinded this notice on November 8, 2006, after receiving Frontier’s “Petition for Extraordinary Review and/or Petition for Reconsideration and Stay” on November 6, 2006.<sup>3</sup> Frontier claimed that it did not receive notice of the September 25 decision until October 27, 2006. Petition at 1. Therefore, it

---

<sup>2</sup> We note that even if a delay of two months did occur, it is unlikely that mere delay in shipping the cargo would amount to a violation of section 10(d)(1) of the Shipping Act, 46 U.S.C. § 41102(c). Previous cases have found a Shipping Act violation for prolonged delay only when additional factors are present, such as a pattern of deception. See *Miller v. French Int’l Movers, Inc.*, No. 1834(I), 28 S.R.R. 1495 (Settlement Officer 2000); *Moreka v. Eastern Mediterranean Shipping Corp.*, No. 1836(I), 28 S.R.R. 1127 (Settlement Officer 1999).

<sup>3</sup> Rule 304(h), 46 C.F.R. § 502.304(h), provides that a petition for reconsideration acts as a stay of the 30 days in which the Commission may decide to review the Settlement Officer’s decision, under Rule 304(g).

asserted that its petition was filed within the 30 days provided by Rule 261, 46 C.F.R. § 502.261.<sup>4</sup> Id.

In its petition for reconsideration, Frontier challenged the Settlement Officer's award of consequential damages for storage fees and rental costs. Petition at 2. Frontier asserted "on information and belief" that "Meyan had already made arrangements for the rental, and it now seeks to misuse the processes of the FMC [to] recover for these expenses which are not reasonably related to this transaction." Id. at 3. The petition argued that it was an error of law to award consequential damages because no such damages can be recovered for delay in delivering the cargo when there is no agreement to deliver the cargo by a certain date. Id. at 2-4. The Respondent cited cases decided under the Carriage of Goods by Sea Act, 46 U.S.C. §§ 1300-1315 (2007), and under the Carmack Amendment, 49 U.S.C. § 14706 *et seq.* (2007), but it failed to cite any cases decided under the Shipping Act. Id.

On January 16, 2007, the Settlement Officer issued a decision denying the petition for reconsideration. The Settlement Officer analyzed Frontier's petition under Rule 304(h), 46 C.F.R. § 502.304(h),<sup>5</sup> noting that "Respondent makes no claim that it

---

<sup>4</sup> Frontier should have cited Rule 304(h), 46 C.F.R. § 502.304(h), governing petitions for reconsideration in informal proceedings. Both rules provide for 30 days in which to file a petition for reconsideration; however, Rule 304(h) specifies that this period begins to run only after service of the Settlement Officer's decision.

<sup>5</sup> Rule 304(h), 46 C.F.R. § 502.304(h), provides, in relevant part:

Within thirty (30) days after service of a final decision by a Settlement Officer, any party may file a petition for reconsideration.... A petition will be subject to summary rejection unless it: (1) Specifies that there has been a change in material fact or in applicable law, which change has occurred after issuance of the decision or order; (2) identifies a substantive error in material fact contained in the decision or order; (3) addresses a material matter in the Settlement Officer's decision upon

satisfies any of the three requisite bases for reconsideration.” Decision Denying Petition at 2-3. In particular, the Settlement Officer noted that Frontier’s petition conceded all of the relevant facts, making only a “legal argument” about consequential damages, which it should have raised in its reply to the claim or in response to requests for additional information. Id. at 3.

On February 16, 2007, the Commission issued a notice to review the decision of the Settlement Officer in this proceeding.

### DISCUSSION

Pursuant to Rule 304(h), a petition for reconsideration in informal proceedings “act[s] as a stay of the [30-day] review period” in which the Commission may exercise its discretionary right to review the Settlement Officer’s decision. See 46 C.F.R. § 502.304(g), (h). After the Settlement Officer issues a decision on the petition for reconsideration, the 30-day review period recommences. 46 C.F.R. § 502.304(h). Thus, if the Settlement Officer denies the petition for reconsideration, as in this case, the Commission may exercise its discretionary right to review either the denial of reconsideration, or the Settlement Officer’s initial decision. We have determined to review the Settlement Officer’s initial decision, rather than the decision to deny reconsideration.

#### A. Awarding Reparations under the Shipping Act

Section 11(a) of the Shipping Act, 46 U.S.C. § 41301(a), allows a complainant to seek reparations for an injury caused by a violation of the Shipping Act. Section 11(g), 46 U.S.C. § 41305(b), authorizes the Commission to award reparations to the

---

which the petitioner has not previously had the opportunity to comment. Petitions which merely elaborate upon or repeat arguments made prior to the decision or order will not be received.



complainant for "actual injury" caused by a violation of the Shipping Act.

In order to receive reparations, the complainant must not only prove a violation of the Shipping Act and actual injury, but also a causal relationship between the two. Such legal issues often require the resolution of disputed factual issues. In addition, factual determinations may be necessary in order to calculate the proper amount of reparations to award. In the sections below, we address the factual errors in the Settlement Officer's award of reparations for rental and storage fees.

B. Storage Fees

In the Settlement Officer's September 25 decision, she found that Frontier had violated section 10(d)(1) of the Shipping Act, 46 U.S.C. § 41102(c), by failing to pay the ocean freight charges to the carrier. Initial Decision at 3. She also found that Meyan suffered actual injury as a result of this violation including "\$1584.00 in storage charges while it secured additional funds to pay a second time for its cargo." *Id.* at 4. Under section 11(g) of the Shipping Act, 46 U.S.C. § 41305(b), the Commission may only award reparations for injuries that are caused by a violation of the Shipping Act. Therefore, Meyan can only seek reimbursement for those storage expenses that were incurred as a result of Frontier's failure to pay the ocean carrier.

Meyan alleged that it incurred the claimed storage fees while the ocean carrier held the excavators at the port awaiting payment of the ocean freight charges. Claim Form at 2. The invoices and explanation submitted by Meyan show that these storage charges began to accrue on June 1, 2005, at a rate of \$16 per day for each excavator. Claim Form at Attachment 7; July 17 Response at 2. The invoices and explanatory tables show that the storage charges continued through July 16, 2005, for the Caterpillar excavator and through July 23, 2005, for the Komatsu excavator, resulting in total storage fees of \$1,584.00. Claim Form



at Attachment 7; July 17 Response at 2. However, the emails between Caytrans and Meyan, all dated June 30, 2005, show that Caytrans released the excavators for pick-up on June 30 after receiving payment from Meyan. Claim Form at Attachment 5.

It is not clear from the record why storage fees continued to accrue for both excavators after June 30, 2005, when Caytrans released the cargo for Meyan to pick up. The Claimant did not demonstrate that the storage fees incurred after June 30 were caused by Respondent's violation of the Shipping Act. The storage fees incurred after this date may have been caused by Meyan's own delay. Therefore, we reverse, in part, the initial decision to award reparations for storage fees, reducing the award to \$960.00, for 30 days of storage between June 1-June 30, 2005, for each excavator at \$16 per day.

C. Rental Fees

As with storage fees, rental fees for replacement excavators can only be awarded as reparations under section 11(g), 46 U.S.C. § 41305(b), to the extent that they were caused by Frontier's violation of the Shipping Act. In its claim, Meyan alleged that it rented two excavators "to replace the excavators stored at the port." Claim Form at 2. In her September 25 decision, the Settlement Officer found that Meyan was entitled to reparations for "rental fees to rent equipment to replace the cargo sitting at the Cartagena port." Initial Decision at 4.

However, the invoices from the rental company, Miko Ltda., dated May 15 and June 15, 2005, that were submitted as evidence by Meyan, do not list the dates the invoices cover and the number of hours each excavator was used on those particular dates. Claim Form at Attachment 8. Nothing in the record indicates the dates of use of these rented excavators. The invoice dated May 15, 2005, suggests that Meyan is claiming reimbursement for rental fees incurred before the cargo arrived at Cartagena, since the cargo

was not shipped until May 19. See Claim Form at Attachments 8, 10.

The invoice from May 15, 2005, assessing charges for 226 hours of use, does not support a claim for rental fees incurred as a result of Frontier's violation of the Shipping Act. Claim Form at Attachment 8. Frontier's failure to pay the ocean carrier could not have caused the need for Meyan to rent replacement equipment prior to the cargo's arrival at the port of Cartagena. Therefore, under section 11(g), 46 U.S.C. § 41305(b), Meyan can only recover reparations for rental fees incurred after the cargo arrived at the port.

The record does not specify the date upon which the cargo arrived at the port of Cartagena. However, we know it was on or before June 1, 2005, the date when storage fees began to accrue. Claim Form at Attachment 7; July 17 Response at 2. Therefore, the invoice dated June 15, 2005, for 242 hours of use, is facially consistent with Meyan's claim that it rented excavators to replace the ones sitting at the port. Claim Form at Attachment 8. Frontier never disputed the validity of this invoice. See Reply Letter; Petition. Therefore, we reverse, in part, the initial decision to award \$28,251.09 in reparations for rental fees, and instead award reparations for the June 15 invoice, but not for the May 15 invoice. Thus, we reduce the amount of reparations awarded for rental fees to \$14,608.47. See Claim Form at 2, Attachment 8.

Including reparations of \$13,326.84 for overpaid freight charges,<sup>6</sup> these reductions result in a total award of reparations in the amount of \$28,895.31, plus interest.

---

<sup>6</sup> As explained in the initial decision, the Settlement Officer awarded \$13,326.84 to Meyan as reparations for overpaid freight charges (the amount Meyan paid to Frontier) rather than the \$14,178.33 requested (the amount Meyan paid to Caytrans) because Meyan did not object when Caytrans included charges for additional cargo tonnage due to an apparent error by Frontier in calculating the weight of the excavators. Initial Decision at 4 n.4. We did not review this portion of the award.

**CONCLUSION**

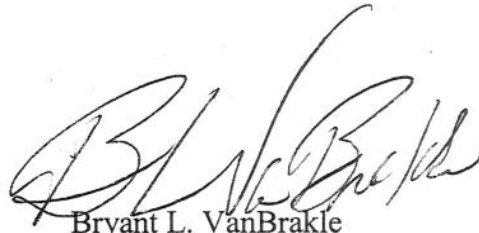
THEREFORE, IT IS ORDERED, That the Decision of the Settlement Officer in this Proceeding is Reversed in Part;

IT IS FURTHER ORDERED, That the Award of Reparations for Storage Fees is Reduced to \$960.00;

IT IS FURTHER ORDERED, That the Award of Reparations for Rental Fees is Reduced to \$14,608.47; and

IT IS FURTHER ORDERED, That Respondent shall pay to Complainant by May 18, 2007, reparations (\$28,895.31) and interest (\$2,517.73) totaling \$31,413.04.

By the Commission.



Bryant L. VanBrakle  
Secretary